



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0861

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant, who at the time of this complaint was living in his vehicle, alleged that the Named Employees impounded his vehicle without legal justification, confiscated his license plates and disabled parking permit, and that this conduct was intended to punish the Complainant.

### **ANALYSIS AND CONCLUSIONS:**

#### **First Interaction with Complainant**

On November 26, 2019, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a Customer Service Request (CSR) which was filed on November 22, 2019, four days prior. The CSR reported a suspicious vehicle that had been parked in a space long-term. NE#1 and NE#2, members of the Community Police Team, logged into the call at 1402 hours.

NE#1 and NE#2 contacted the driver of the vehicle, the Complainant in this case. The vehicle was parked in a 2-hour parking zone. NE#1 asked if the vehicle was drivable, and the Complainant said it was. The Named Employees told the Complainant that he had been parked in excess of the posted two-hour limit and requested that he move his



vehicle. The Complainant refused, stating that because he had handicapped plates and a placard, he was exempt from the two-hour limit. The disabled plates were from Alaska. The Complainant and the Named Employees debated the privileges conferred by the handicapped plates, which the Complainant asserted gave him the right to park for 72 hours and which the Named Employees stated gave him the privilege to park in designated handicapped-only spots for the posted time. Ultimately, NE#2 informed the Complainant that he had 24 hours to move his vehicle or she and NE#1 would impound it. The Named Employees cleared the scene.

#### Named Employee #1's Research into Disability Parking Privilege

The Named Employees returned to the South Precinct, where NE#1 researched the parking issue. He stated that he "verified" the information with the DMV and consulted with the South Precinct Liaison, an Assistant City Attorney tasked with providing legal advice to officers. The Liaison referred NE#1 to SMC 11.23.380. The SMC states in pertinent part that:

A person who has obtained a parking placard or special license plate under RCW 46.19.010 and RCW 46.19.030 shall be allowed to park a vehicle displaying the placard or plate that is being used to transport the holder of such special parking privileges free of charge for a maximum of a four-hour time period in parking areas, including those with a parking payment device, that are otherwise restricted as to the length of time parking is permitted. Areas with four-hour time limits shall be appropriately signed and/or marked.

In his interview, NE#1 stated that he understood this statute to give the Complainant the legal right to park for up to four hours, and that on November 26, 2019, it had already been established that the Complainant was parked for over that four hour limit. NE#1 stated that he therefore had the legal right to order a vehicle impound.

#### Second Interaction with Complainant

On November 27, 2019, NE#1 and NE#2 returned at approximately 0945 hours. OPA notes that this is 19 hours and 45 minutes after the NEs issued the Complainant his 24-hour warning. The Named Employees contacted the Complainant and asked if he was planning on moving. NE#1 was the primary officer and had the most contact with the Complainant. The Complainant accused them of lying to him about what the law was and threatening him with confiscation of his vehicle, which was also his home. NE#1 denied issuing threats and said that any enforcement would be due to the Complainant's refusal to comply with lawful orders.

During this conversation, NE#1 stated that he had the "legal right" to obtain the Complainant's driver's license to determine whether the disability plates were valid. The Complainant argued that because he was not operating his vehicle, he did not have to give NE#1 identification. However, the Complainant ultimately did so. NE#1 examined the driver's license and told the Complainant that, since it was a Washington license and the Complainant was a Washington resident, he was obligated to register his vehicle in Washington within a certain number of days of the issue date of the license. NE#1 noted that the time had now lapsed to do so.

NE#1 and NE#2 went to the patrol car to conduct a check on the placard. NE#1 stated that the Alaska plates were not valid due to the Complainant's residence in Washington. After entering information into the MDT system, NE#2 stated that she could find no information about the Complainant possessing a valid disability parking privilege.



NE#1 returned to the Complainant and told him that if he moved his vehicle, the interaction would end, but that if he continued to refuse then NE#1 would issue a ticket and impound the vehicle for the Complainant's failure to register in Washington state. The Complainant continued to refuse. NE#1 noted that, if the Complainant interfered, he would be subject to arrest for obstruction. The Complainant stated that this was a threat and requested a supervisor. NE#1 called his sergeant, Named Employee #3 (NE#3), to screen the call. NE#1 told NE#3 over radio that the Department received a complaint about the Complainant's vehicle, so he was reluctant to leave it there. After the call screening, the Complainant noted that NE#1 and NE#2 arrived approximately four hours prior to the 24-hour deadline they had issued him. NE#1 replied that the 24 hours was a courtesy and that legally, the Complainant was in violation and subject to tow.

NE#3 arrived on the scene. NE#1 briefed him on the situation and NE#3 stated: "I'm thinking I would take the disabled placard. I'd write him a criminal cite for failing to register and however you want to handle the parking issue...take the invalid placard for evidence...you guys still want to impound the vehicle?" NE#1 replied that the Complainant's refusal to move was the reason for the interaction. NE#2 suggested that they could criminally cite the Complainant and issue an additional 72-hour notice instead of immediately impounding the vehicle. NE#3 said that he supported "whatever you guys want to do." Ultimately, NE#1 informed the Complainant that they would be impounding his vehicle but would not issue him a criminal citation if he voluntarily exited the vehicle. The Complainant did so, and NE#1 called for a tow.

A man driving a white truck arrived and flagged down NE#3. He asked NE#3 if the Complainant's vehicle was still broken and offered to tow it. NE#1 walked up as well, and the man told him that he had a "real tow truck" and offered to move the vehicle. NE#1 said that "it was a little late" and that "unfortunately this is the way it's going."

While awaiting the tow, the Named Employees engaged in conversation. At one point, NE#2 said that, had the Complainant told them initially that his vehicle was inoperable, they would have given him more time and potentially exercised their discretion differently, but that the Complainant was "trying to call our bluff." NE#1 seemed to agree. NE#3 stated that he would "still push to get that [disability] placard and those plates." The Complainant also engaged NE#1. He said that NE#1 would "help me a lot by not taking my home and everything I own." NE#1 replied that he had no choice because the Complainant refused to move his vehicle, and his vehicle was inoperable. He clarified that because the vehicle was inoperable, it was subject to impound, and that the interaction generally could have been avoided had the Complainant been honest regarding his vehicle being inoperable. Ultimately, a Lincoln Towing vehicle arrived and impounded the Complainant's vehicle.

#### OPA Investigation and Interviews

OPA found that the Named Employees were substantially incorrect as to the law governing the Complainant's right to occupy the parking space. OPA contacted SPD's Parking Enforcement Unit and was informed that in a situation similar to this, an immediate impound would be nonstandard because the sign was not marked as a tow away zone and that standard procedure would be to issue a parking ticket. If the vehicle remained 24 hours after issuance of the ticket, it would be impounded at that time.

In addition, OPA determined, where occupant of the vehicle possessed a valid disability parking permit, they would usually be allowed to remain in the spot for 72 hours prior to impound, notwithstanding SMC 11.23.380. Generally, disability parking is not time-limited for placard holders unless they are in specific, disability parking-only areas that are clearly marked as limited to 4-hours with a visible tow away zone symbol. OPA notes that, in its judgment, this



appears to contravene the plain text of SMC 11.23.380. OPA also contacted the South Precinct Liaison, who stated that she assists officers with legal questions by providing them relevant citations to the SMC. In her view, NE#1 interpreted the statute in “good faith.”

With respect to the confiscation of the disability placard, OPA determined that, in Washington, disability placards and plates are issued in conjunction with a disability ID card. The holder must produce this card at the request of a law enforcement officer or be subject to citation and confiscation of the placard. *See* RCW 46.19.050. OPA has not been able to determine that Alaska issues a similar card. OPA notes further that SMC 11.23.400 permits an officer to request that the person “show [his or her] identification card.” SMC 11.23.400(F). Another SMC section references an “identification card issued under chapter 46.19 RCW.” SMC 11.23.400(D). Thus, while the natural reading of this provision is that an officer may demand to see an identification card “issued under chapter 46.19 RCW,” OPA finds that the section could also be interpreted in good faith to refer to a driver’s license. In this case, OPA also notes that the Named Employees’ attempt to check the validity of the Alaska disability placard returned no information, and that consequently they were unable to verify the placard’s validity or invalidity either way. Consequently, while the Named Employees’ decision to confiscate the placards would have likely been correct with respect to a *Washington* placard and its associated state-issued ID card, the decision to do so with respect to an *Alaska* placard rested on substantially less secure footing.

OPA also finds that the confiscation of the Complainant’s Alaska license plates was contrary to standard procedure. A Washington resident must register his or her vehicle with the state within 30 days, and failure to do so is a gross misdemeanor punishable by citation and fines for a first offense. *See* RCW 46.16A.030. Nowhere in the statute is confiscation of the plates referenced (as it is in the statute relating to disability placards, *supra*). OPA was unable to determine the basis on which the vehicle license plates were confiscated.

OPA interviewed the Named Employees. In his interview, NE#1 stated that, during his first interaction with the Complainant on November 26, 2019, he was not familiar with disabled parking permits or out-of-state disabled plates. He said that, for this reason, he urged the Complainant to move his vehicle, which would have ended the contact. He explained that after the contact, he researched disability parking permits and consulted with the Liaison and based his decisions off the advice he obtained.

NE#1 stated that it was not his objective to impound the vehicle and that he tried to convince the Complainant to move. He stated that he believed he impounded the vehicle for failure to register it in Washington, a gross misdemeanor, but that he could not recall exactly. NE#1 also stated that he believed the vehicle met the criteria for a junk vehicle. OPA’s examination of the supporting documentation from the incident revealed that it was impounded under SMC 11.72.260 – Overtime.

With respect to confiscating the placard, NE#1 stated that he did so because the Complainant failed to provide any paperwork supporting the placard’s validity. Because of the Complainant’s Washington state residency (revealed by his driver’s license), NE#1 believed that the placard was invalid since it was issued with Alaska plates which were no longer valid by virtue of the Complainant’s residency in Washington. OPA noted in its interview with NE#1 that, normally, NE#1 would not have been justified in compelling the Complainant to produce his driver’s license because he was not operating his vehicle (*see* SPD Policy 6.220-POL-3 (citing RCW 46.61.021)). NE#1 explained that he sought the identification to verify the disability placard (see above).



NE#1 explained why he did not allow the full 24 hours between his first and second contact with the Complainant prior to ordering an impound. NE#1 stated that once he realized the plates were no longer valid (after inspecting the Complainant's driver's license), he had the right to impound the vehicle for failure to register.

NE#1 stated, and BWV confirmed, that he made the decision to impound the Complainant's vehicle and that NE#3, the supervisor, told him that he would support NE#1's decisions with respect to an impound. NE#1 recalled, and BWV confirmed, that NE#3 made the decision to confiscate the license plates and enter them into evidence.

OPA interviewed NE#2. NE#2 largely described the interaction consistently with NE#1's interview above. She noted that she and NE#1 provided the Complainant with SMC 11.72.065(B), related to violations of the disabled parking privilege. She noted that both she and NE#1 consulted the Liaison regarding the disabled parking privilege. She characterized the interaction she and NE#1 had with the Complainant as negative and said that he became escalated (BWV largely confirmed this).

NE#2 initially stated that NE#1 decided to impound the vehicle because it was unregistered in Washington. However, she also stated that the vehicle was impounded for being parked over the time limit and for an invalid disability placard. NE#2 stated that she had impounded vehicles for similar violations and had been involved in the RV Remediation Program, which frequently involved impounding vehicles. Ultimately, NE#2 cited the vehicle's lack of registration in Washington as the reason she and NE#1 had the legal right to impound it.

Regarding the 24-hour warning delivered to the Complainant, NE#2 stated that, because the two-hour parking posted on the sign began at 0700 hours, the Complainant would have had 24 hours from 0700 to vacate the area consistent with the warning. NE#2 said that she understood how this could have been unclear to the Complainant. NE#2 explained that neither she nor the Data Section were able to verify the Complainant's Alaska-issued disability placard, but that, due to it being issued by another state, she was unable to conclusively state that it was invalid. She stated that NE#1 had the legal right to require the Complainant to identify himself in order to verify the placard, and that to her, an "identification card" issued by the state meant a driver's license. NE#2 said that the decision to confiscate the license plates was made by NE#3 and that she believed it was based on "improper display." She stated that she had been under the impression it would be referred for follow-up investigation.

Regarding the decision to tow the vehicle, NE#2 explained that the decision was made by NE#1. She stated her belief that it would have been impermissible to allow the Complainant's friend to tow the vehicle because to her knowledge, the friend was not a licensed tow-truck operator and that the Department could incur liability. She stated her impression, based on the RV Remediation Program, that once a tow was ordered from a contractor like Lincoln Towing, officers lacked discretion to cancel the tow.

OPA notes that it separately contacted Lincoln Towing and that per their supervisors, SPD may cancel a tow at any time, up to and including the point where a vehicle is hooked to the tow truck. However, OPA does not have reason to believe that NE#2 was purposefully mistaken regarding her prior experience and training.

Finally, OPA interviewed NE#3. NE#3 stated that as a supervisor, he had the authority to oversee employee conduct to ensure that it complied with policy, and to overrule employees when their planned course of action violated policy. He confirmed that as a supervisor, it was his responsibility to gather sufficient information to determine conclusively what course of action was prudent and correct on calls he screened.



NE#3 said that the complaint was about more than a parking issue, and that he agreed that non-action was not the correct course of action because the Department had received a community complaint about the Complainant's vehicle being impermissibly parked. He confirmed that he knew the Complainant was living in his vehicle, but that the Complainant's refusal to take any action to move the vehicle limited his and the other Named Employees' ability to exercise discretion. NE#3 said that, though the Complainant had a disability placard and plates, they could not be verified and "appeared altered or invalid." He stated that the Complainant could not produce any documentation supporting the validity of his disability privilege, and that having such documentation was the responsibility of the Complainant under the applicable statutes.

NE#3 said that he was not certain how NE#1 got the Complainant's driver's license, but said that, in his judgment, NE#1 would have had more than the reasonable suspicion that a crime (failure to register) was being committed required to conduct a *Terry* stop. OPA notes that NE#1 did not appear to have reason to believe a crime had been committed prior to viewing the Complainant's license, which revealed that he was a Washington resident and had been for more than the 30 days given to new residents to register their vehicles.

NE#3 noted that the Alaska plates were "very old" and in a style no longer issued by Alaska. He said this made him suspect that they were no longer valid. He stated that it was his decision to confiscate the plates and that he did so in order that they might be produced as evidence.

#### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[D]iscretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

In evaluating this allegation, OPA comes to the conclusion that it would not have made the same decisions as NE#1 and NE#2 did during this incident. Most notably, OPA would not have impounded the Complainant's vehicle under the circumstances of this case. In reaching this determination, OPA finds several points to be important. First, while NE#1 did not have to honor the 24-hour "warning" he provided to the Complainant, it seemed unfair that he returned to the scene four hours prior to that period expiring. Maybe the Complainant still would not have moved the vehicle, but at least the officers would have been consistent with their prior statement. Second, the officers misinterpreted the applicable law. While this could form the basis for a finding that they abused their discretion, OPA notes that the mistake appeared to be in good faith and that they did not receive any favors from the South Precinct Liaison, who simply pointed them to the SMC without providing any legal analysis. Third, while NE#1 and NE#2 were responding to a community complaint, it does not seem to OPA that the impound was immediately necessary for public safety. While OPA recognizes the scale of the problem in Seattle related to individuals living in parked vehicles, a parked vehicle in itself poses minimal public safety risk and impounding it is contrary to standard procedure.

The above being said, OPA cannot say that this decision was such an abuse of discretion that it warrants a Sustained finding. Regardless of the officers' misinterpretation of the law, they still had a basis to cite the Complainant's vehicle. Similarly, even if not the standard outcome, they could have impounded the vehicle. OPA instead believes





that a Training Referral is the more appropriate outcome for both NE#1 and NE#2. However, future similar decision-making will likely not have the same outcome and could result in discipline.

- **Training Referral:** The chain of command for NE#1 and NE#2 should discuss this matter with them. Specifically, the chain of command should go over their decision to impound the vehicle and whether that decision was consistent with the law and standard operating procedures. This training and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Even if OPA disagrees with the decision by NE#1 and NE#2 to impound the vehicle, OPA does not find any evidence supporting a determination that they did so in order to retaliate against him. Notably, there is no indication of such retaliation from the BWV. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #1).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Training Referral)**



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**Named Employee #3 - Allegation #1**

***1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command***

SPD Policy 1.020-POL-7 states that command employees are required to take responsibility for every aspect of their command. The policy further instructs that: "Employees in a supervisory role will coordinate and direct subordinates and allocate resources to achieve the operations objective." (SPD Policy 1.020-POL-7.) Lastly, the policy makes clear that supervisors will "perform the full range of administrative functions relying upon policy, direction, training, and personal initiative as a guide for themselves and their command in achieving the highest level of performance possible." (*Id.*)

Even more so than NE#1 and NE#2, OPA finds that NE#3 failed to optimally handle this matter and to appropriately exercise his supervisory responsibilities. OPA finds it concerning that, instead of critically evaluating this matter and making decisions based on the circumstances presented, NE#3 said multiple times that he intended to support whatever decisions NE#1 and NE#2 felt were appropriate. While OPA does not believe that a supervisor should necessarily second guess officers, the supervisor should explore discretionary decisions like the one that occurred here and ensure that they are sound. Moreover, while NE#3 may have been justified in seizing the Complainant's plates, this does not mean that he should have. This is particularly the case as the only reason that the officers knew that they could be seized was due to the questionable obtaining of the Complainant's license by NE#1.

OPA deliberated significantly over whether to recommend that this allegation be Sustained against NE#3. OPA ultimately decided not to do so given his lack of any similar prior incidents during his career. However, OPA hopes that NE#3 will handle like situations differently and better in the future.

- **Training Referral:** NE#3's chain of command should discuss his supervision of this incident with him and whether it met Department expectations. The chain of command should specifically discuss NE#3's approval of the impounding of the vehicle and the decision to seize the Complainant's license plates. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**